

61679-0

61679-0

83277-3

No. 61679-0

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE**

---

**CITY OF SEATTLE,**

Appellant,

vs.

**The Honorable George W. Holifield,  
Matthew Jacob,  
Jacob Culley,  
Respondents.**

FILED  
COURT OF APPEALS DIV. #1  
STATE OF WASHINGTON  
2008 SEP 18 AM 9:46

---

**ON APPEAL FROM THE SEATTLE MUNICIPAL COURT  
The Honorable George W. Holifield, Judge**

**AND FROM THE SUPERIOR COURT OF  
THE STATE OF WASHINGTON FOR KING COUNTY  
The Honorable Cheryl Carey, Judge**

---

**APPELLANT'S OPENING BRIEF**

---

**THOMAS A. CARR**  
**SEATTLE CITY ATTORNEY**  
Mary E. Lynch  
Assistant City Attorney  
WSBA #18981  
Attorney for City of Seattle

Seattle Law Department  
700 Fifth Ave., Suite 5350  
PO Box 94667  
Seattle, Washington 98124-4667  
Telephone (206) 684-7757

ORIGINAL

## TABLE OF CONTENTS

	<u>Page</u>
A. INTRODUCTION.....	1
B. ASSIGNMENTS OF ERROR.....	1
C. STATEMENT OF THE CASE.....	1
D. ARGUMENT.....	2
1. The Superior Court Erred When It Found That The Trial Court Committed Clear Legal Error But Also Found That The City Failed To Meet It's Burden For Acceptance Of A Writ Of Review.....	3
a. The City had no plain, speedy and adequate remedy absent review by writ..	4
b. The ruling of the trial court in <i>Seattle v.</i> <i>Kennedy</i> is a clear error of law.....	8
E. CONCLUSION.....	13

## TABLE OF AUTHORITIES

### CASES

<i>Armstrong v. Safeco Ins. Co.</i> , 111 Wn. 2d 784, 765, P. 2d 276 (1988).....	9
<i>Bushman v. New Holland</i> , 83 Wn. 2d 429, 518 P. 2d 1078 (1974).....	6
<i>City of Mount Vernon v. Mount Vernon Municipal Court</i> , 93 Wn. App 501, 973 P. 2d 3 (1998).....	8
<i>Gall Landau Young v. Hedreen</i> , 63 Wn. App. 91, 99, 816 P. 2d 762 (1991).....	5
<i>Seattle v. Keene</i> , 108 Wn. App. 630, 31 P. 3d 1234 (2001).....	5
<i>Seattle v. Orwick</i> , 113 Wn. 2d 823, 831, 784 P. 2d 161 (1989)...	10, 11
<i>State ex rel. Public Utility Dist. No. 1 of Pend Oreille County v. Schwab et al.</i> , 40 Wn. 2d 814, 246 P. 2d 1081 (1952).....	6
<i>State v. Azpitarte</i> , 140 Wn. 2d 138, 140-41, 995 P. 2d 31 (2000).	9
<i>State v. Breazeale</i> , 144 Wn.2d 829, 837, 31 P.3d 1155 (2001)....	3
<i>State v. Busig</i> , 119 Wn. App. 381, 81 P. 3d 143 (2003).....	11
<i>State v. Cochran</i> , 51 Wn. App. 116, 751 P. 2d 1194 (1988).....	12
<i>State v. Garza</i> , 99 Wn. App. 291, 994 P. 2d 969 (2000).....	12
<i>State v. Glasser</i> , 37 Wn. App. 131, 132, 678 P. 2d 827 (1984) rev. denied 102 Wn. 2d 1008 (1984).....	7
<i>State v. Greenwood</i> , 120 Wn. 2d 585, 592, 845 P. 2d 971 (1993).	9

<i>State v. Houser</i> , 91 Wn. 2d 269, 588 P. 2d 219 (1978).....	8
<i>State v. Hutchinson</i> , 111 Wn. 2d 872, 877, 766 P. 2d 447 (1989).	9
<i>State v. J.M.</i> , 144 Wn.2d 472, 480, 28 P.3d 720 (2001).....	3
<i>State v. Ladiges</i> , 66 Wn. 2d 273, 401 P. 2d 977 (1965).....	7
<i>State v. Louie</i> , 68 Wn. 2d 304, 413 P. 2d 7 (1966).....	13
<i>State. v. Marks</i> , 114 Wn. 2d 724, 790 P. 2d 138 (1990).....	12
<i>State v. McReynolds</i> , 104 Wn. App. 560, 17 P. 3d 608 (2000)...	12
<i>State v. Mack</i> , 89 Wn. 2d 788, 576 P. 2d 44 (1978).....	7
<i>State v. Mandel</i> , 23 Wn. App. 562, 597 P. 2d 443 (1979).....	7
<i>State v. Miller</i> , 59 Wn. 2d 27, 365 P. 2d 612 (1961).....	7
<i>State v. Taplin</i> , 55 Wn. App. 668, 670, 779 P. 2d 1151 (1989)...	9
<i>State v. White</i> , 126 Wn. App. 131, 135, 107 P. 3d 753 (2005)....	12
<i>State v. Whitney</i> , 69 Wn. 2d 256, 418 P. 2d 143 (1966).....	7

## STATUTES

RCW 46.20.208.....	2
--------------------	---

## COURT RULES

CrRLJ 8.3.....	1, 2, 9, 10, 11, 12, 13
RALJ 2.2.....	

**A. INTRODUCTION**

The Appellant City of Seattle asks this court to reverse the written order of the Superior Court denying a writ of review of the written order of the Honorable George W. Holifield suppressing breath tests pursuant to CrRLJ 8.3.

**B. ASSIGNMENTS OF ERROR.**

1. The Superior Court erred in denying the City's writ of review when it held that the ruling of the trial court was "clear legal error" but that the City had failed to meet its burden.

2. The Superior Court erred when it held that the City had an adequate remedy at law despite the clear legal error of the written decision of the trial court.

3. The trial court erred in holding that suppression of evidence was an available remedy under CrRLJ 8.3, which provides for *dismissal* of a case after a showing of governmental misconduct resulting in material prejudice.

**C. STATEMENT OF THE CASE**

The Respondents (hereinafter "Defendants") were arrested and charged with Driving Under the Influence.<sup>1</sup> The Defendants subsequently

---

<sup>1</sup> CP 3, Affidavit in Support of Petition for Writ of Review.

submitted to breath tests pursuant to RCW 46.20.208.<sup>2</sup> The Defendants moved to suppress their breath tests, raising the “Ann Marie Gordon” issue.<sup>3</sup>

On March 11, 2008, the Honorable George W. Holifield entered an order suppressing breath test evidence in **all** cases where the tests were conducted with simulator solutions allegedly tested by Ann Marie Gordon.<sup>4</sup> That order was officially entered in the case of *City of Seattle v. Roger C. Kennedy*, however it acted to suppress breath tests in many other cases, including the Defendants.<sup>5</sup> For purposes of this appeal, the Plaintiff is alleging legal error based on the conclusions of law contained in the trial court’s order suppressing the breath tests and the failure of the Superior Court to grant a Writ of Review of that order.

On April 1, 2008 the City sought review of the trial court order by writ before the Honorable Cheryl Carey in King County Superior Court. The petition alleged that the suppression of evidence under CrRLJ 8.3 was a clear error of law, and that the City had no adequate remedy on appeal.<sup>6</sup> In an order issued on April 25, 2008, the court ruled that “Motion for Writ

---

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 4.

<sup>4</sup> CP 15 - 24, City’s Brief in Support of Writ of Review Attachment “A”.

<sup>5</sup> *Id.*

<sup>6</sup> CP 5 - 14, City’s Brief in Support of Writ of Review.

of Review is Denied. The Court finds that trial court's ruling is a clear legal error. The City has failed to meet its burden."<sup>7</sup>

This court has granted the Plaintiff's motion for discretionary review as well as an emergency stay of proceedings of the trial court pending the resolution of this appeal.

#### **D. ARGUMENT.**

1. **The Superior Court Erred When It Found That The Trial Court Committed Clear Legal Error But Also Found That The City Failed To Meet Its Burden For Acceptance Of A Writ Of Review.**

Questions of law are reviewed de novo.<sup>8</sup> The Superior Court apparently found that while the trial court judge committed clear legal error in suppressing breath tests, the City had nonetheless failed to meet its burden for obtaining a writ of review. While this is only vaguely articulated in the Superior Court order, based on the language of the order this is the only logical conclusion that can be reached. In this respect the decision of the Superior Court is in conflict with opinions of this court as well as the Supreme Court, and it sanctions suppression of evidence when no prejudice has been established by the defendant and when no

---

<sup>7</sup> CP 45, Order Denying Motion for Writ if Review.

<sup>8</sup> *State v. Breazeale*, 144 Wash.2d 829, 837, 31 P.3d 1155 (2001); *State v. J.M.*, 144 Wash.2d 472, 480, 28 P.3d 720 (2001).

ordinance, statute, court rule, or court opinion provides the authority to act in such a manner.

a. **The City had no plain, speedy and adequate remedy absent review by writ.**

The Plaintiff established in the Superior Court that a writ of review was appropriate in these cases and should have been granted. Absent review by writ, no remedy exists to reverse the erroneous suppression of evidence in this case. The suppression below did not terminate the prosecution's case completely, therefore an appeal prior to trial is precluded.<sup>9</sup> Further, the Superior Court recognized the clear error of the trial court's decision suppressing the breath tests, but because the court denied the writ, the trial court is under no obligation to reverse itself.

If the matter proceeds to trial, the error of which the Plaintiff complains will have become moot. The result of the trial must logically be either an acquittal or a conviction. Neither circumstance provides the Plaintiff an opportunity to appeal the suppression. RALJ 2.2(c)(1) and both state and federal constitutions forbid an appeal from an acquittal. Similarly, if the prosecution obtains a conviction, appeal is precluded because the prevailing party may not appeal a favorable judgment.<sup>10</sup> Thus, no appeal of the suppression proceeding is possible for the prosecution in



this matter and the writ should have been issued.<sup>11</sup>

The Defendants may argue that a cross-appeal is an adequate remedy. Aside from the obvious incongruity of arguing that the Plaintiff's right of "appeal" should be construed to rely entirely upon the Defendant's choice to appeal, a mere possibility of a remedy by review should not be construed as a substitute for an actual review. The possibility of a remedy is not a remedy.

If the trial court's illegal suppression is not addressed and the Plaintiff is required to proceed to trial, the wrongful suppression is not remedied. The ill of which the Plaintiff complained, proceeding to trial without critical evidence of guilt, will have occurred. The mere possibility that the Plaintiff might, under an unlikely and speculative set of circumstances, have its complaints addressed in another trial is no "remedy".<sup>12</sup>

Black's Law Dictionary 5<sup>th</sup> Ed. defines "adequate remedy" as:

[A] remedy which is plain and complete, and as practical and efficient to the ends of justice and its prompt administration as a remedy in

---

<sup>9</sup> See RALJ 2.2(c)(2).

<sup>10</sup> See RALJ 2.1(a).

<sup>11</sup> See e.g. *Seattle v. Keene*, 108 Wn. App. 630, 31 P. 3d 1234 (2001).

<sup>12</sup> *Gall Landau Young v. Hedreen*, 63 Wn. App. 91, 99, 816 P.2d 762 (1991)(Court properly exercises equity jurisdiction when remedy is not certain or does not provide complete relief).

equity[.]

Any remedy provided by the appellate process in these cases is inadequate. Inadequacy is shown where it is apparent to the court that it will not be able to protect the rights of litigants or afford them adequate redress, otherwise than through use of one of the extraordinary writs.<sup>13</sup>

The equitable remedy that the Plaintiff sought was review of the illegal suppression by Writ. The Plaintiff simply cannot equate the plain, complete, and immediate remedy or review by Writ with the circuitous, speculative and lengthy process of awaiting the possibility that a second trial would be ordered by a RALJ judge based upon a possible appeal successfully pursued by the defense on an unknown issue after a trial in which the prosecution might prevail without its most persuasive evidence.

The court in *Seattle v. Keene*, supra, cited with approval *Bushman v. New Holland*<sup>14</sup>. The *Bushman* court concluded a Writ is appropriate to address pre-trial discovery complaints because "the trial court's alleged erroneous interpretation of the discovery rules would greatly hinder the plaintiff in her investigation of the case and greatly restrict her ability to present evidence at trial."<sup>15</sup> The circumstances herein mitigate even more

---

<sup>13</sup> *State ex rel. Public Utility Dist. No. 1 of Pend Oreille County v. Schwab et al.* 40 Wn. 2d 814, 246 P. 2d 1081 (1952).

<sup>14</sup> 83 Wn.2d 429, 518 P.2d 1078 (1974).

<sup>15</sup> *Bushman*, 83 Wn.2d at 432.

favorably for a Writ because, unlike the defendant in *Bushman*, the prosecution has no right of appeal<sup>16</sup>.

This legal circumstance is also similar to *State v. Mack*<sup>17</sup>, where the Petitioner sought a Writ to prevent a trial based upon a double jeopardy violation.<sup>18</sup> The *Mack* court held the Petitioner should not be required to litigate the case in municipal court and relitigate the case in Superior Court in order to address the merits of whether he should even have had the first trial. This same analysis is followed in numerous subsequent cases.<sup>19</sup> Thus, even if City had a right to appeal, the conclusion of these cases is appeal would not be an adequate remedy.

In *State v. Glasser*<sup>20</sup>, the court held that grant of a deferred prosecution petition after trial was an act in excess of jurisdiction and a Writ to the superior court should have been granted to reverse the illegal act. Although a petition for deferred prosecution might someday be revoked and defendant eventually be convicted, the implicit reasoning was that a possible favorable future outcome is not a "plain, adequate, and

---

<sup>16</sup> See e.g. *State v. Whitney*, 69 WN.2d 256, 418 P.2d 143 (1966).

<sup>17</sup> 89 WN.2d 788, 576 P.2d 44 (1978).

<sup>18</sup> Writ of Prohibition cases differ in many ways from Writs of Review, but they share the same requirement of a "plain, adequate, and speedy remedy".

<sup>19</sup> See e.g. *State v. Mandel*, 23 Wn. App. 562, 597 P.2d 443 (1979); *State v. Ladiges*, 66 WN.2d 273, 401 P.2d 977 (1965); *State v. Miller*, 59 WN.2d 27, 365 P.2d 612 (1961).

<sup>20</sup> 37 Wn. App. 131, 132, 678 P.2d 827 (1984) rev. denied 102 WN.2d 1008 (1984).

speedy remedy.” Like the *Glasser* court, this court should conclude that a speculative favorable outcome by cross-appeal is neither a “plain” nor an “adequate” remedy.

Similarly, in *City of Mount Vernon v. Mount Vernon Municipal Court*<sup>21</sup>, the court held that a writ of review should have issued to correct the illegal suppression of a breath test result based on a plainly erroneous interpretation of a WAC. The City of Mount Vernon was precisely in the same position as the City of Seattle herein and a writ should issue.

The cases cited above strongly support the conclusion that no “adequate remedy” is available to the Plaintiff.<sup>22</sup> The inherently speculative nature of cross-review is not a “plain, adequate, and speedy remedy” and the writ of review should have issued.

**b. The ruling of the trial court in *Seattle v. Kennedy* is a clear error of law.**

The Defendants will likely argue that despite the decision of the Superior Court judge recognizing the clear legal error of the trial court’s order, the trial judge’s order was nonetheless based on sound legal principle and thus not erroneous. This argument by the Defendants will fail.

---

<sup>21</sup> 93 Wn. App 501, 973 P.2d 3 (1998).

<sup>22</sup> See also, *State v. Houser*, 91 Wn.2d 269, 588 P.2d 219 (1978)(where trial set beyond speedy trial deadline, Writ is appropriate remedy to prevent trial).

CrRLJ 8.3 is by its nature a rule that provides for *dismissal* of actions in cases of governmental misconduct. The rule provides:

### **RULE 8.3 DISMISSAL**

\*\*\*

**(b) On Motion of Court.** The court, in the furtherance of justice after notice and hearing, may *dismiss* any criminal prosecution due to arbitrary action or governmental misconduct when there has been *prejudice* to the rights of the accused which *materially* affect the accused's right to a fair trial. The court shall set forth its reasons in a written order.

(Emphasis added). The rule makes no provision for suppression of evidence.

Court rules are interpreted using principles of statutory construction.<sup>23</sup> The construction of a statute is reviewed de novo.<sup>24</sup> Language which is clear does not require or permit any construction.<sup>25</sup> Where there is no ambiguity in a rule there is nothing for a court to interpret.<sup>26</sup> The parties' ability to argue two interpretations of a statute does not necessarily render the statute ambiguous.<sup>27</sup>

---

<sup>23</sup> *State v. Greenwood*, 120 Wn. 2d 585, 592, 845 P. 2d 971 (1993).

<sup>24</sup> *State v. Azpitarte*, 140 Wn. 2d 138, 140-41, 995 P. 2d 31 (2000).

<sup>25</sup> *State v. Hutchinson*, 111 Wn. 2d 872, 877, 766 P. 2d 447 (1989).

<sup>26</sup> *Id.*

<sup>27</sup> *State v. Taplin*, 55 Wn. App. 668, 670, 779 P. 2d 1151 (1989) citing *Armstrong v. Safeco Ins. Co.*, 111 Wn. 2d 784, 765 P.2d 276 (1988).

As the Superior Court acknowledged, the trial court erred as a matter of law in suppressing evidence under CrRLJ 8.3. Applying the rules of statutory construction, a court may *dismiss* charges against a defendant if there is 1) governmental misconduct; and 2) actual prejudice. Dismissal of charges is the only remedy sanctioned by the rule to cure governmental misconduct that results in actual prejudice. Suppression is **not** a remedy contemplated by the rule.

Additionally, case law supports the position that suppression is not a remedy under CrRLJ 8.3. Where the defense has failed to establish actual prejudice, suppression of evidence *is not* appropriate as an alternative remedy, notwithstanding alleged misconduct.<sup>28</sup> The cases relied on by the trial court in its conclusions of law do not support suppression under CrRLJ 8.3. Rather, those cases dealt with suppression of evidence for violation of the *right to counsel*.<sup>29</sup> In *Orwick*, the defendant sought and obtained dismissal of his case in the trial court for denial of the right to counsel. On appeal, the Supreme Court held that dismissal was unwarranted in cases where suppression of evidence would eliminate the prejudice cause by an infringement of the right of access to counsel.

---

<sup>28</sup> *City of Seattle v. Orwick*, 113 Wn.2d 823, 831, citing *State v. Ivey*, 73 Wn.2d 859, 590, 439 P.2d 974 (1968).

In *State v. Busig*,<sup>30</sup> the defendant contended that her case should have been dismissed pursuant CrR 8.3(b) due to arbitrary action or governmental misconduct based on inaccurate statements in an affidavit of probable cause for a search warrant. The defendant alleged that the search warrant led to an invasion of her home and prejudice to her case. The Court of Appeals, Division Three, affirmed the trial court, stating in dicta that neither dismissal nor suppression of evidence under CrR 8.3(b) was justified. The Court did not hold that suppression was an available remedy under CrR 8.3(b).

The courts in both *Orwick* and *Busig* addressed issues related to an alleged violation of a constitutional right. While in *Busig* the trial court action resulting in the appeal began as a motion to dismiss under CrR 8.3(b), the ultimate question answered in both *Orwick* and *Busig* was whether suppression was an appropriate remedy for a violation of a constitutional right where prejudice is *presumed*.<sup>31</sup> This is to be contrasted with CrRLJ 8.3(b), where a defendant must show his right to a fair trial has been *materially* affected. Additionally, in cases where suppression of evidence is discussed in relation to CrRLJ 8.3(b), all courts have concluded that material prejudice to the defendant must still exist for

---

<sup>29</sup> See, e.g. *Seattle v. Orwick*, at 831.

<sup>30</sup> 119 Wn. App. 381, 81 P. 3d 143 (2003)

suppression to be an appropriate alternative.<sup>32</sup> Further, in those cases specific constitutional rights were impaired.

The trial judge erred as a matter of law when he suppressed breath tests results pursuant CrRLJ 8.3 because suppression is not a remedy under the rule. Moreover, *any* action under CrRLJ 8.3 would be a clear error of law because the Defendants completely failed to establish any actual prejudice, as evidenced by the trial court's failure to make any findings as to how the defendant has been *materially* affected by any of the allegations of misconduct. The trial judge merely found that the magnitude of the misconduct was the equivalent of prejudice. While the court's order stated that the trial judge would not believe the testimony of certain witnesses (BKL, EF, MP and AMG) if called to testify at trial, there was no finding that any of those witnesses would, in fact, testify at trial. Moreover, there is no showing in the order that any breath test – the subject of the suppression motion - was materially affected by any of the alleged governmental misconduct. In meeting the burden of proof under CrRLJ 8.3(b), the defendant *may not rely on speculation*.<sup>33</sup>

---

<sup>31</sup> *Orwick*, 113 Wn. 2d at 829.

<sup>32</sup> *See, generally State v. McReynolds*, 104 Wn.App. 560, 17 P.3d 608 (2000)(Div. III); *State v. Garza*, 99 Wn.App. 291, 994 P.2d 868 (2000)(Div. III); *State v. Marks*, 114 Wn.2d 724, 790 P.2d 138, (1990); *State v. Cochran*, 51 Wn.App. 116, 751 P.2d 1194 (1988).

<sup>33</sup> *Id.*; *State v. White*, 126 Wn. App. 131, 135, 107 P.3d 753 (2005)(finding that



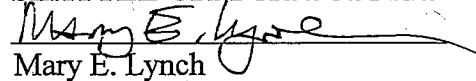
The trial judge erred as a matter of law in suppressing the breath tests in these cases. Applying the rules of statutory construction and established case law, suppression of evidence is not a remedy under CrRLJ 8.3. Further, the Defendants did not suffer any actual prejudice which would warrant any action under the rule.

#### **E. CONCLUSION**

The Superior Court properly found that the trial court committed a clear error of law. However, in denying the Plaintiff's Petition for a Writ of Review, the Superior Court effectively sanctioned the action of the trial court despite the clear legal error. Suppression of evidence under CrRLJ 8.3 is not supported by any case law in this state. This court should remand this case back to Superior Court to grant the Writ of Review and reverse the written ruling of the trial court suppressing evidence.

Respectfully submitted this 17<sup>th</sup> day of September, 2008

**THOMAS A. CARR**  
**SEATTLE CITY ATTORNEY**

  
Mary E. Lynch  
Assistant City Attorney  
WSBA #18981  
Attorney for Plaintiff

---

the alleged prejudice may not be merely vague or speculative- it must directly relate defendant's ability to have a fair trial); *See also State v. Louie*, 68 Wn. 2d 304, 413 P.2d 7 (1966)(finding the defense motion to dismiss alleging a due process violation was properly denied because the defendant's claim of prejudice was purely speculative).

1  
2  
3  
4  
5  
6  
7 **IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**  
8 **DIVISION ONE**

9 **CITY OF SEATTLE,**

10 Petitioner, )

**No. 61679-0**

11 vs. )

12 **The Honorable George W. Holifield,)**

**DECLARATION OF  
SERVICE**

13 **Matthew Jacob,** )

14 **Jacob Culley,** )

15 Respondents. )

16 COMES NOW the Petition City of Seattle, by and through its attorney of record, Mary E.  
17 Lynch, and files this Declaration of Service.

18 I, Mary E. Lynch, do hereby affirm:

19  
20 1. On September 17, 2008 I served by ABC Legal Messengers Appellant's Opening Brief to  
21 the attorneys of record of the above named Respondents. The notice and motion were  
22 messengered to:

23 Andrew Elliott (Attorney for respondent Matthew Jacob)  
24 Law Offices of James Egan  
25 605 1<sup>st</sup> Ave.  
26 Ste. 400  
Seattle, WA 98104

27 Michael Harbeson (Attorney for respondent Jacob Culley)  
28

29 **DECLARATION OF  
SERVICE 1**

FILED  
COURT OF APPEALS DIV. #1  
STATE OF WASHINGTON  
2008 SEP 23 PM 3:28  
Thomas A. Carr  
Seattle City Attorney  
700 Fifth Ave,  
Ste. 5350  
PO Box 94667  
Seattle, WA 98124-4667  
(206) 684-7757

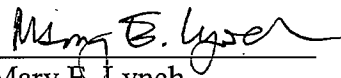
1 5611 76<sup>th</sup> St.  
2 Ste. A  
Lakewood, WA 98499-8650

3 A copy of the ABC Messenger form is attached to this declaration.

4 I certify under penalty of perjury that the above is true and correct to the best of my  
5 knowledge.  
6

7 Respectfully submitted this 22<sup>nd</sup> day of September, 2008.

8 **THOMAS A. CARR**  
9 **SEATTLE CITY ATTORNEY**

10 By   
11 Mary E. Lynch  
12 Assistant City Attorney  
13 WSBA #18981  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

29 **DECLARATION OF  
SERVICE 2**

Thomas A. Carr  
Seattle City Attorney  
700 Fifth Ave,  
Ste. 5350  
PO Box 94667  
Seattle, WA 98124-4667  
(206) 684-7757



LEGAL SERVICES

www.abclegal.com

SEATTLE  
633 YESLER WAY.  
SEATTLE, WA 98104  
PH: 206-623-8771  
800-736-7295  
FAX: 206-625-9247

TACOMA  
943 TACOMA AVE S  
TACOMA, WA 98402  
PH: 253-383-1791  
800-736-7250  
FAX: 253-272-9359

BELLEVUE  
10655 NE 4TH  
SUITE L101  
BELLEVUE, WA 98004  
PH: 425-455-0102  
FAX: 425-455-3153

EVERETT  
2927 ROCKEFELLER  
EVERETT, WA 98201  
PH: 425-258-4591  
800-869-7785  
FAX: 425-252-9322

OLYMPIA  
119 W LEGION WY  
OLYMPIA, WA 98501  
PH: 360-754-6595  
800-828-0199  
FAX: 360-357-3302

MESSENGER SERVICE LAST DAY		FIRM NAME / ATTY <b>SEATTLE CITY ATTORNEY'S OFFICE PUBLIC AND COMMUNITY SAFETY DIVISION</b>		YOUR ABC ACCT. NO.		DATE <b>9/17/08</b>					
DATE/TIME <b>9/19/08 4:30 PM</b>		ADDRESS <b>700 5TH AVE SUITE 5850 PO BOX 94867</b>		SECRETARY / CONTACT <b>MEL</b>		PHONE <b>206-684-0842</b>					
		CLIENT MATTER # <b>SEATTLE, WA 98124-4867</b>		E-MAIL (SECRETARY)							
CASE NAME <b>Seattle v. Holigield et al.</b>				CAUSE NO. <b>61679-0</b>							
DOCUMENTS <b>Appellant's Opening Brief</b>											
<input type="checkbox"/> SIGNATURE REQUIRED ON DOCUMENTS		<input checked="" type="checkbox"/> RETURN CONFORMED COPY		<input type="checkbox"/> CONFORM ORIGINAL DO NOT FILE							
OTHER INSTRUCTIONS <b>Out of Area delivery Approved</b>											
1 <b>Andrew Elliot Law Offices of James Egan 605 1st Ave. Ste. 400 Seattle, WA 98104</b>				3 <b>THE LAW OFFICES SEP 17 2008 DELIVERED M. Harbeson JAMES EGAN</b>							
2 <b>Michael Harbeson 5611 76th St. Ste. A Lakewood, WA 98499-8650</b>				ON SEP 19 2008 BY <b>L</b> RECEIVED ABC LEGAL COURT OF APPEALS DIVISION ONE SEP 19 2008							
FILING	COUNTY	SUPERIOR COURT	DISTRICT COURT (INDICATE DISTRICT)	AUDITOR	APPEALS COURT		FEDERAL COURT	SEA	TAC	STATE SUPREME CRT	SEC. STATE CORP.
					I-(SEA)	II-(TAC)	CIVIL	BANKRUPTCY			
					<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

ABC Legal Services, Inc. (ABC) assumes no liability for errors caused in whole or in part by the improper filling out of this messenger service request form, including but not limited to, omission of a last day date/time, filings not marked in the proper and designated filing boxes, illegible print or script, etc. All messenger requests are double-checked for accuracy and completion prior to returning to the requestor, however, it is the responsibility of the requestor to also check the completed request form for accuracy and to notify us immediately if there are any questions or discrepancies. Usage of this form constitutes a contract between the requestor and ABC and acknowledgment and acceptance by the requestor of the terms set forth above.